Supreme Court, U.S.
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No:

In The
Supreme Court of the United States

Gregory Alston

V.

GTE Directories Corporation

On Petition for Writ of Certiorari

UNITED STATES DISTRICT COURT
SEVENTH JUDICAL DISTRICT
UNITED STATES COURT OF APPEALS

On Petition for Writ of Certiorari

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Statement of Issues

1) District Court Judge Manning used her discretion in her ruling. She clearly stated that her reasoning for her ruling was due to the plaintiff had not worked any overtime in 1995.

2) The District Court failed to realize, that the plaintiff is rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF RE-PRISAL PROHIBITED Due to the defendent demanding that the plaintiff work during drill weekends.

3) A clear violation of the Plaintiff's Seventh Amendments Rights. (Jury Trial)

4) The judge to this day has not answered my motion to supplement the record with direct evidance I filed two motions one was mooted and she refused to answer the first motion.

5)Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the court, all summary judgment against plantiff should be voided.

6)The defendent should be fined, for not particapting in the framwork of discovery.§ 33:416, Fed 37.

7)Court of Appeals failed to embrace the Issue instead the affirmed the desision with hearsay a documente.
Throughtout the case the defendent has produced affidates,witness and documents without allowing for cross examination.

8)Both Court's refused to knowledge that I had established a prima faca case. Dist 1991, 156 Ill.DEC 797. 212 ILL App. 3d 645, 571 N,E.2d 777 By not recognizing that similary employee of defendent were treated more favorable than Alston.

Defendent

GTE, a Delaware Corporation doing business in Illinois with its principal place of business located at GTE Place, 2200 West Airfield Drive, P.O. Box 619810, DFW Airport, Texas 75261-9810.

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TABLE OF AUTHORITES

1. The Trial Court Erred in not recognizing that the Plaintiff had a Prima Facie Case of Race Discrimination under both Title VII of the Civil Rights Act of 1964 42 U.S.C.§1981.

l) *Johnson v. City of Fort Wayne*, 91 F.3d 922, 931 (7th Cir. 1996)9, 18

2) *McDonnell Douglas Corp. v. Green*, 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973)

2. The Court Erred by not recognizing that similarly employees of Defendant were treated more favorable than Alston.

l) Hiatt v. Rockwell Intern. Corp., 26 F.3d 761 (7th Cir. 1994) 11, 14

2) Johnson v. Artim Transp. System, *Inc.*, 826 F. 2d 538, 543 (7th Cir. 1987)

3) Hughes v. Brown, 20 F.3d 745 at 747 15

4) National Labor Relations Board v. Shelby Memorial Hospital Association, F.3d 550 (7th Cir.- 1993)

5) Green v, Amstrong Rubber Co,. 612F.2d 967,22 F.E.P. Cas (BNA)125 (5th Cir) cert. denied,449 U.S. 879 (1980)

3. The Trial Court erred in granting the Defendant's Summary Judgment, because there were disputed issues of facts pending.

l) Holland v. Arthur Anderson & Co., App. 1 Dist.l991, 156 Ill.Dec. 797, 212 Ill.App.3d 645, 571 N.E.2d 777.20, 21

2) *Sons v. Taylor*, App. 5 Dist.l991, 162 Ill.Dec. 467, 219 Ill.App.3d 923,579 N.E.2d 1281.19, 21

3) Skipper Marine Electronics, Inc. v.United Parcel Service, Inc.,App. 1 Dist.1991, 155 Ill.Dec. 55, 210 Ill.App.3d 231, 569 N.E.2d

3) Kerr v United States Dist. Court for Northern Dist. (1976) 426 US 394. 48 L Ed 725, 96 s Ct 2119.

The Defendant violated The Plaintiff 's rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF REPRISAL PROHIBITED

Fair Housing Act 1968 (42 USCS § 3612) 3rd Circut--Laskaris v Thornburg(1984, Ca3 Pa) 733F22d260,38 Fr Serv 2d

Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the court, all summary judgment against plantiff should be voided.

Ex parte Simons (1918) 247 US 231, 62 Led 1094, 38 S CT 497

Hindman v. National - Ben Franklin life Insurance Corp., 677 F.2d 617.620 ,620 (7th Cir. 1982),

JURISIDICTION STATEMENT

The jurisdiction of this Court is invoked under 28 U.S.C.§1625(a). This is a discrimination case. The Plaintiff (ALSTON) was discharged from GTE Directories Corporations due to race discrimination in employment in violation of Title VII of the Civil Rights Act of 1964 42 U.S.C.§1981. The Plaintiffs Seventh Amendment rights to trial by jury were ignored. The defendent (GTE Directories Corporations) was granted summary judgment in the case. The Plaintiff (ALSTON) states that The Court erred by not ordering the defendant to produce the direct discovery evidence needed for District Court or Court of Appeals to make a fair and equitable decision.

Judge Blanche M. Manning's Memorandum Notice clearly states her reasoning for her judgment. (was due to the fact that Plaintiff had not worked any overtime in 1995) the Plaintiff produced some of 1995 year end pay stubs to prove the existence of fact in issues without any inference. Due to the Defendents evassive discovery tactics the judge did not realize her ruling was against **§ 4311 Discrimination against person who serve in the uniformed services and act of reprisal prohibited.**

The Court erred by not stating the plaintiff established a

prima facie case of race discrimination under both Title VII of the Civil Rights Act of 1964 42 U.S.C.§1981.

The Court erred in the former proceedings by striking the information, due to defendents evasive discovery tactics, by not producing the required amount of timecards as promised, and the electronic key entry log. § 33:416, Fed 37. The District Court made the ruling based on the information at hand. The Distrist Court judge erred which improperly denied a party the right to a jury trial in a civial action. The Appellate Court erred by not embracing the judges desision. District Court Decision §3:235 Compelling execrise of authority by mooting the second motion and refusing to address the first Motion to Supplement the Record, with direct evidance. the District had the oppotunity to correct the descretion, But refused to take any action.

REASON FOR GRANTING CERTIORARI WRIT

This action was brought by Plaintiff ProSe, GREGORY ALSTON, an African American male, residing in the State of Illinois. Plaintiff requests sanctions against Defendant under FED.CIV.P 37 for not adhering to discovery as promised. Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the Court, all summary judgment against plaintiff. UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301,§4311(a)(b)ACTS OF REPRISAL PROHIBITED due to defendants constant demands for plaintiff to work during drill weekends.The Plaintiff request for relief pursuant to 28 U.S.C. § 1331 and 1367, 42 U.S.C. 2000 e et. seq. and 42 U.S.C. 1981 and Title VII of the Civil Rights Act of 1866, as amended, against his termination by his employer Defendant. GTE, a Delaware Corporation doing business in Illinois with its principal place of business located at GTE Place, 2200 West Airfield Drive, P.O. Box 619810, DFW Airport, Texas 75261-9810.

The Defendant stated that Plaintiff was terminated, because he falsified his timecard records, went to school, went to the Navy Reserves, and would not work overtime, and same was against GTE Rules, which were set down in their rule book. That Plaintiff stated that the termination

reasons are a pretext, and Defendant termination Plaintiff because he is an African American and that is not a legitimate reason for termination.

The Plaintiff was prepared to present his witnesses to testify, refuting said charges by the Defendant, but the Defendant motioned for a Summary Judgment. After briefing, the Court allowed a Summary Judgment in favor of the Defendant and against the Plaintiff.

The Court Order on the Summary Judgment was riddled with errors as to the facts, the witnesses, and the findings. The Plaintiff was not allowed to bring his witnesses to Court to testify that white employees were allowed to leave work early to go to school and falsify their time card records, who continued to work at the Defendant's employment.

The Court did not order Defendant to produce the company's time sheets that were requested in discovery In the Production of Documents. *Federal Business Record Act (28 U.S.C.§1732) 8 ALR FED919.Timecard entry logs, records made solely for the purpose of the pending litigation.* The Defendant could find all other requested documents, except the pertinent documents to this case. The Court erroneously based its facts and judgment soley on the Defendant's presentation of facts and documents. The Court

gave no credence to the Plaintiffs testimony, nor allowed Plaintiffs witnesses to testify to the facts of this case and the discriminatory practice of the Defendant against the Plaintiff. *Kerr v United States Dist. Court for Northern Dist. (1976) 426 US 394. 48 L Ed 725, 96 s Ct 2119.*

The Court ruled in favor of the Defendant and against the Plaintiff on the Summary Judgment without a hearing. The Plaintiff did not learn of the Court's decision in time to motion for a reconsideration, and the Plaintiff appealed the Court Order.

GREGORY ALSTON was hired by GTE in the summer of 1993, as a helper in the Press Department of GTE'S printing plant in Des Plaines, illinois. LESLIE WATKINS, Human Resource Administrator, and DON DAVIS were involved in the process of hiring Plaintiff and had personal knowledge that Plaintiff is African American.

Among Plaintiff's is other general responsibilities as an operator for the Rachwal Platemaker, Plaintiff trained other employees on such equipment. GTE Management not only had knowledge of Plaintiff having been a member of the Naval Reserves and a student enrolled at Northeastern Illinois University throughout his employment at GTE, but, that management gave explicit authorization that he be allowed to do such activities and be given leniency to the hours that he would be

at the GTE facility.

At all times relevant, Plaintiff performed his duties in a satisfactory manner, having received overall favorable ratings all three years that he was evaluated. His performance evaluations contained such statements, as "[t]he press room is very satisfied with the service he provides. " Plaintiff further states that he had good relations with his co-workers.

His performance evaluations state, "Greg has used good judgment in dealing with his co-workers," "Greg is pleasant and enjoyable to work with," and "Greg communicates very well with his peers on his shift.
Prior to Plaintiff's is being hired and during his interview with DON DAVIS,

Plaintiff was informed that he was going to be trained on the Rachwal Platemaker since he had no prior experience working on such equipment. Plaintiff, as well as the other employees, made repeated requests to be allowed to cross-train on other equipment, but he was denied the request. Caucasian employees were being trained on other machines. On July 26, 1995, Defendant was hiring for an available position as a "prepress tech." Plaintiff was not qualified to fill the position because of his lack of training, because the Defendant would not allow him to be trained on other machines.

Plaintiff requested to fill an available position operating the Rachwal camera and his request was denied. LYNN PRINT pressured TORY LINTZ(Caucasian) to fill the same vacant spot for the Rachwal camera, even after LINTZ refused the position and stated to PRINT that she did not want the position, After Plaintiff had stated to PRINT that he did want the position.
On or about July 26, 1995, Plaintiff applied for the position of pre-press tech, but was denied the position. On or around January 15, 1996, Plaintiff applied for an available position with Defendant, but was denied the position again.
On or around July 30, 1996, ALSTON was transferred out of the Pre-press Department to the Press Department. Shortly after ALSTON transferred to the new department, his wife, RENEE, called, at between 8:15p.m. - 8:30 p.m., and left a message with PAULINE ANDERSON to please have ALSTON return her call.
ALSTON's returned her telephone call right away, at which time, ALSTON'S wife informed him that she had injured herself and requested that he come home, as she was alone in the house. ALSTON requested, and was granted, permission to leave by his supervisor, Mr Oberding and he left to go home shortly thereafter.

ALSTON did not fill out his time card prior to leaving on July 30, 1996. In fact, Plaintiff did not even know the where-abouts of his time card at that time, since he had just hours

before had been forced to relocated to a new department and his supervisor had possession of his timecard.(Exhibit 3) On approximately August 3, 1996, BILL OBERDING requested that Plaintiff fill out his time sheet for the previous week. Plaintiff states that "it was normal practice" of the employees to fill out their time cards on a date later than the date for which their time was recorded. For example, it was customary for employees to fill out their time card for a pay period at the end of such pay period. Plaintiff was not given the opportunity to accurately report his hours for the date in question, as he filled out his time sheet, not on the day in question, but at the end of the week.

Plaintiff started to sign the time card, but did not complete his signature. Furthermore, prior to verifying his reported time with his signature, Plaintiff excused himself from BILL OBERDING'S presence, and explained to BILL that he wished to go into the locker room to verify his time. Plaintiff kept notes of his time in his locker.

Plaintiff was unsure whether he had worked three hours or two hours on July 20, 1996. He was also unsure of whether he had worked one hour or two hours on July 28, 1996. He inadvertently reported one hour of work for July 28, 1996 instead of two hours, and reported three hours of work for July 30, instead of two hours, The total decrepience is 45 minuets. Which could have been cleared up if the supervisor had

fullfilled his job and checked the time card entery logs, to acurtly verfiy the total time.

When Plaintiff returned to finish reporting his time and sign his time card, OBERDING was gone; hence, Plaintiff never had the opportunity to accurately report his time. Plaintiffs timecard for the pay period including July 30, 1996 is only partially signed with his first name, "GREGORY", rather than with his full signature, "GREGORY ALSTON" as is signed on all of his other time cards during the three years he worked for the Defendant.

Plaintiff observed PRINT"S time card on two separate occacions as it indicated that she worked her regular hours, and Plaintiff further testified that on two separate occasions that he could recall, he tried to locate PRINT during her normally scheduled work hours and was told she had left for school. Defendant suggests that the inaccuracies on PRINT'S time cards are offset by the total number of hours she worked however, PRINT was not terminated. Moreover, OBERDING must have had knowledge of any other employees' time card falsification as evidenced by the fact that he was the supervisor in charge of time cards, and he noticed the discrepancy in Plaintiffs time card immediately.

Plaintiff observed MCCALL falsifying his timecard after arriving late. Plaintiff also observed MCCALL explaining to a

junior personnel member how to fill out his time card falsely. Plaintiff complained to BILL OBERDING that BILL MCCALL was consistently arriving late and asked OBERDING to discuss these concerns with MCCALL. OBERDING subsequently spoke to MCCALL about the behavior, but MCCALL was not terminated.

Additionally, management knew that an employee other than Plaintiff was falsifying his or her time sheet as evidenced by the minutes of a meeting held on June 20, 1996. Plaintiff was not present at this meeting, and the meeting took place prior to the time that ALSTON was suppose to have committed time card falsification. Notably, one of the primary topics of this meeting addressed the issue of time card falsification. One of the primary topics of this meeting addressed the issue of time card falsification and the serious nature of the offense.

Certainly, management was aware of a problem with time card falsification and that the culprit was not ALSTON, as it would be pointless to address a disciplinary speech at an individual who is not present to reap the benefits of such a lecture. Plaintiff was not terminated for falsification of his time card. Plaintiff was terminated, because he is an African American and is affliated with the military.

The Court erred by not stating that the Plaintiff had a Prima Facie Case. To make out a *prima facie* case of discriminatory discharge under either Title VII or Section 1981, ALSTON

must prove: "(1) that he belongs to a protected group; (2) that he performed the job satisfactorily; (3) that he was subject to an adverse employment action; and (4) that similarly situation employees received more favorable treatment." *Johnson v. City of Fort Wayne, 91* F.3d 922, 931 (7th Cir. 1996). ALSTON is a member of a protected group because of his race African American ALSTON performed his job satisfactorily he suffered an adverse employment action in that he was terminated (Defendant's 12(M) Statement No.47); and similarly situated (Caucasian) employees received more favorable treatment. Similarly situated, Caucasian employees were not terminated.

The Court erred by discussing Plaintiff's not working overtime, because Plaintiff did work overtime and he had his pay stubs to prove same. Plaintiff was cooperative and did not work overtime when he had to attend military duty (once a month on weekends), and when he had classes at Northeastern Illinois University.

From the beginning of Plaintiffs time on the job, the Defendant understood and had always allowed Plaintiffto go to these two necessary events. Caucasian employees were allowed to leave work early in order to attend college classes, also. The Court stated on page 3, bottom paragraph of its 6/18/98 Memorandum and Order that Defendant had a Rule Book that stated that Defendant, at said time of firing, Plaintiff had a corrective

counseling process, which included three steps: 1) informal discussions 2) written warning, and 3) a final warning. The Court states the policy exists, but none of the three steps were used with Plaintiff. During this time, the Plaintiff was given satisfactory ratings, given awards for attendance and very good service ,to the company, and given the responsibility to train new employees on the company's equipment.

The Court erred on pages 10 and 11 in the 6/18/98 Court Memorandum and Order by not ordering the Defendant to produce the electronic key card entry log and the timecards for the specific dates in question to show the direct evidence that Defendant discriminated against Plaintiff, because he is an African American affliated with the Military. The Defendant's criteria for termination of an employee was not used in this case, because Plaintiff is an African American.

The Court erred by not finding Plaintiff was discriminated against on Circumstantial Evidence and set same for trial to hear the crucial testimony of the witnesses on falsifying documents, especially testimony of LYNN PRINT and BILL MCCALL.

Order, the Court states that "Alston was discharged for time card falsification" and that ALSTON had failed to raise a genuine issue of material fact as to whether the Defendant proffound reason for terminating his employment is merely a

pretext for discrimination. Defendant has shown that Caucasian employees were treated differently; and Caucasian employees falsified time cards and were not fired.

Defendant has argued, in its Motion for Summary Judgment, that ALSTON cannot establish that similarly situated employees were treated more favorably than ALSTON. Defendant's argument relies on many false conclusions as well as an erroneous statement of law.

The Defendant also refused to release requested documents. First ALSTON has not admitted to falsifying his time card. ALSTON has only admitted to initially recording on his time sheet that he left work on 9:00 p.m. for July 30, 1996, but ALSTON has also testified that he was not given the opportunity to complete his time sheet prior to BILL OBERDING leaving with his incomplete time card.

However, assuming, ***only for the sake of this argument*** that ALSTON did falsify his time sheet, ALSTON has provided the Court with sufficient evidence that other employees also falsified their time sheets.

ALSTON does not have to allege the same misconduct, only similar misconduct in order to establish similarly situated individuals. Defendant erroneously relies on *Plair v. E. J. Brach & Sons, Inc.*, as the final word on the doctrine of law regarding what constitutes a similarly situated individual.

Defendant argues that Plair mandates that in order to be considered similarly situated to another employee, a Plaintiff who has engaged in misconduct must locate another employee who has engaged in *the same misconduct* as the Plaintiff.

Bill Oberding never verified the correctness of the total hours worked with the electronic key card entry log, As the plaintiff had requested at the time of termination. As the Court must consider that Bill Oberding didn't do his job, yet Alston received the adverse action.

It is well established and undisturbed law in the Seventh Circuit that in order for employees to identify similarly situated individuals with respect to misconduct, they need only identify individuals whose acts are of comparable seriousness and not identical company disciplinary rules. *Hiatt v. Rocwell Intern. Corp.*, 26 F.3d 761 (7th Cir. 1994) Plaintiff's fare free to compare similar conduct, focusing more on the nature of the misconduct rather than on specific company rules"),

See also *Johnson v. Artim Transp. System, Inc.*, 826 F. 2d 538, 543 (7th Cir. 1987) (acts of comparable seriousness need not be violations of identical disciplinary rules). Defendant's narrow and incorrect pleading of *Plair* comes from a footnote at the end of the case upon which Defen-

dant now bases its entire argument . *Plair*, 105 F.3d at 350, F.N.3. Footnote 3 states, in relevant part:

"Moreover, most of the 'comparables' did not engage in all of the same misconduct Plair did: leave work early without supervisor approval, fail to punch out, his time card was fraudulently stamped, the checker sheet falsely showed him to have completed his shift, and found behind the plant under suspicious circumstances [having to do with a 100 pound box of candy] without a coherent explanation. The district court found Plair's circumstances 'unique' and thus that Plair's 'comparables' did not raise a genuine issue of material fact." Id

Unlike the situation in Plair, for which Plair was even arrested, ALSTON did not engage in a litany of willful misconduct all occurring within a time frame of a couple of hours. Moreover, ALSTON was granted his supervisor's permission before he left work on July 30, 1996, and he did not have another employee falsify "punch out" for him, nor did he intentionally misrepresent his time worked when he incompletely recorded his time onto his time card . Most importantly, ALSTON was accused of a single and simple violation falsifying his time card. This is not a unique situation like Plair's bizarre adventure of misconduct. Caucasian Employees of Defendant who falsified their time cards were not terminated for the same conduct as Alston allegedy committed.

Although ALSTON is not required to allege that other employee's engaged in the same misconduct, ALSTON is able to identify two employees who did, in fact, engage in the same

conduct, but who were not terminated.

The personnel policy Alston is alleged to have violated is 3.2.1 which states, "knowingly falsifying a time document and/ or not reflecting actual time worked will be cause for immediate termination.

Both LYNN PRINT and BILL MCCALL violated this policy during the time ALSTON worked for Defendant, but neither was discharged. The electronic key card entry logs would prove fact in this matter.

In fact, Defendant seems to have made concessions for MS. PRINT and MR. MCCALL that as long as their total number of hours actually worked equal the total numbers of hours they claim to have been at Defendant's work site, they are excused from having to follow Defendant Corporation's personnel policy and are then free to falsify and/or misreport their time as much as they want. (Defendant's Memorandum of Law in Support of its Motion for Summary Judgment, p. 14, 18).

This flexibility was not extended to ALSTON. ALSTON has testified that even if he inadvertently misrecorded the actual times coming and going on his time card that he actually worked more hours than what is even recorded on his time sheet, as he generally arrives at work ten to fifteen minutes early. (ALSTON declaration). Further, ALSTON has testified that on Sunday July 28, 1996, he worked an extra hour and

thirty-five minutes of overtime not reflected on his time sheet. (ALSTON declaration). Because ALSTON was not given the opportunity to use his extra hours to offset the inaccuracy on his time sheet, and LYNN PRINT (Caucasian) is routinely given that opportunity, ALSTON has established a prima facie case of race discrimination, as Defendant's have offered no reasonable or legitimate explanation as to why PRINT received favorable treatment.

Similarly, Defendant has offered no reasonable or legitimate explanation as to why MCCALL was not terminated for falsifying time sheets. MCCALL consistently came to work late, every day, but consistently recorded on his time card that he was on time. Because the time sheets affirmatively state that they are to be filled out in 15 minute increments MCCALL'S act of failing to accurately fill out his time sheet to the fifteen minute increment is an act of time sheet falsification and results in him getting paid for an extra hour and a quarter per week. Even if this Court finds that MCCALL'S actions constituted only repeated tardiness, the Seventh Circuit has stated that similar conduct violations are sufficient to establish similarly situated employees. *Hiatt v. Rockwell Intern. Corp.*, 26 F3d 761 (7th Cir. 1994).

Management knew of other employees who falsified their time sheets. Defendant has also argued that even if

Plaintiff was to establish that similarly situated employees also falsified their time sheets, Plaintiff could not establish that Defendant was aware of such behavior by these employees and therefore, could not have treated them more favorable.

Aside from almost admitting to its knowledge of PRINT'S and MCCALL'S time card falsification in its Memorandum in support of its Motion for Summary Judgment Defendant had knowledge of time card falsification by other employees prior to the time that ALSTON was alleged to have falsified his time card.

Defendant was aware at a meeting that took place on June 20, 1996, in which time card violations were discussed, without naming the individual accused.

ALSTON was not present at this meeting. Clearly, management was aware of a problem with time card falsification and the culprit was not Alston, as it would be pointless to address a disciplinary speech at an individual who is not present to reap the benefits of the lecture.

ALSTON was never even given the opportunity to explain the inaccuracy on his time card to BILL OBERDING, nor did Defendant make any efforts to independently verify the time at which ALSTON left work on July 30, 1996, by looking up the electronic key card record logs, which record when individuals enter and leave the building after hours. This action of willfil oversight/

neglect by Oberding was merely a pretext for discrimination. Defendant has shown that Caucasian employees were treated differently; and Caucasian employees falsified time cards and were not fired.

Defendant also did not allow ALSTON a voice with which to complain of mistreatment, as Defendant denied ALSTON'S intemal complaint against Defendant for disparate treatment despite of such treatment which ALSTON provided to the company. Defendant's treatment of ALSTON not even allowing him an opportunity to refute misconduct before or after terminating him – as opposed to Defendant's treatment of PRINT and MCCALL – allowing these employees to routinely violate a written company policy which is supposed to result in immediate termination is a textbook example of disparate treatment of similarly situated employees.

At the very least, the differential treatment between these employees creates a material issue of fact of whether Defendant discriminated against ALSTON, which is not properly decided on summary judgment.

Defendant's stated reason for terminating ALSTON is pretextual.

An employee may establish pretext indirectly by providing one of the following: (1) Defendant's explanation had no basis in fact, or (2) Defendant's reason for terminating Plaintiff was not the 'real' reason, or (3) the reason stated was insuffi-

cient to warrant the adverse job action. *Johnson v. City of Fort Wayne, Indiana, 91* F.3d 922, 931 (7th Cir., 1996). When establishing that an employer's explanation is pretextual, an employee must "focus on the specific reasons advanced by the Defendant[s]." Citing *Hughes v. Brown,* 20 F.3d 745 at 747. Defendant's purported reason for terminating Plaintiff is insufficient grounds to warrant Plaintiffs termination. (all evidence on material issue not produced).

In the instant case, questions of fact were pending when the Court ruled on a Summary Judgment for Defendant. Some of the questions of material fact that need to be addressed in testimony are as follows:

1 . The credibility of the employer's representatives, BILL OBERDING, STEVE SCARBURY, PAUL KIEFER, RODGER DELONG, AND LESLIE WATKINS.

2. The credibility of LYNN PRINT, BILL MCCALL, and RALPH DUTTKO, who leaves work early, and/or changes his/her time card.

3 . The credibility of Plaintiff.

4. The documents of the time card entry log from May through August, 1996, would show that Plaintiff did not falsify his time card and that others did.

5. The Court did not acknowledge the conflicting statements

between the Defendant's employer representatives: BILL OBERDING and LESLIE WATKINS as to whether the Defendant had time card entry logs or not.

6. The comparison between the time card logs and electronic key card entry log will show that Caucasian employees falsified their time sheets. Alston testified that he filled out his time card at various times. Some time that day after work, the next day, or some time at the end of week Plaintiff would fill out his time card, like other employees.

7. The Court ignored Plaintiff 's rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF REPRISAL PROHIBITED due to defendant's constant harassing demands for the Plaintiff to work overtime during drill weekends.

The real material facts issue that must be addressed is that Plaintiff has witnesses that will testify to other employees of the Defendant that fill out their time cards similarly to the Plaintiff, and Caucasian employees having falsified time cards without being terminated from the Defendant's employment. The Court should hear the witnesses' testimony and see the requested production of documents that Defendant is hiding and not producing, which will refute the Defendant's reason for terminating the Plaintiff.

The Court's 6/18/98 Memorandum and Order is filled with

erroneous material statements that the Court states as facts, of this case, even though neither side stated same, such as:

1. The Court stated that Plaintiff refused to work overtime on page 3 and 4 of the 6/18/98 Memorandum and Order. The Plaintiff testified that he worked overtime frequently, and he has enclosed in the Appendix his overtime year end pay for 1995. The Court refused to order Defendant to produce the document to show Plaintiff worked overtime.

2. The Court stated that Plaintiff committed intentional falsification of his time card, and Plaintiff testified that he did not intentionally falsify his time card. The employer contributed to Plaintiffs unemployment compensation that he received for six months. If the employee commits misconduct on the job and that is why he is fired, then the employee will not receive unemployment compensation.

See Appendix for claimant information and pay stubs from the beginning, middle and end of the time period and the W-2 Form for 1996. The unemployment office stated that the falsification of the time card was not willful or deliberate and thery was no noted history of this action.

3. The Court stated on page 5 of the 6/18/98 Court Memorandum and Order, that Plaintiff refused to work for 8 hours, five days a week, to 10 hours, four days a week. ALSTON objected to those hours." This is not true. ALSTON said he did

work the new hours, and his timecard will show that he worked 10 hours, four days a week. See Appendix showing Plaintiff worked for Defendant 10 hours from 6:00 a.m. to 4:00 p.m. (7/30/96 - 8/12/96)

4. The Court stated that Plaintiff refused to work on weekends. Plaintiff stated that he worked on weekends, except when he was m school at Northeastern Illinois University or attending the Navy Reserves, which he had permission to do by his employer for the three (3) years he was Defendant's employee.

5. The Court stated on page 7, third paragraph of the Court's 6/18/98 Memorandum and Order, that "there is no time clock at the Des Plaines Plant..." Plaintiff testified, Defendant LESLIE WATKINS testified, and the record shows that there IS a timeclock at the Des Plaines Plant, which is called an electronic entry log. See same in Appendix. Federal Business Record Act (28 U.S.C.§1732) 8 ALR FED 919.§33:413.

6. The Court states that "GTE'S policy provides that [k]nowingly falsifying a time document and/or not reflecting actual time worked will be cause for immediate termination. And that the supervisor is responsible for verifying and maintaining accurate record of the hours worked by each employee. The policy does not make any exceptions for falsification of less than an hour. The Plaintiff testified that he did not falsify his timecard,

and he had not completely filled out his time card, as he only wrote his first name. Defendant, allowed unemployment compensation to be paid to Plaintiff who was deemed not willfully and deliberately falsifying said job time card. The Court should hear the testimony of Caucasian employees that falsified time cards and were not terminated from their jobs. The Court refused to order the Defendant to produce the records of the said Caucasian employees to show that Plaintiff did not falsify his time card.

7. The Court on the 6/18/98 Memorandum and Order on page 8, paragraph 2, stated that the Defendant "WATKINS called his supervisor THERESA MARTINEZ, the Regional Director of Human Resources. WATKINS explained the facts, as she understood them and solicited MARTINEZ'S input." Plaintiff states that he asked MARTINEZ if she gave WATKINS any input and MARTINEZ state, "no." WATKINS is not telling the truth, and the Court should allow MARTINEZ to testify to what she said and did, and the Court should not rely on Defendant's hearsay from WATKINS.

8. The Court stated on page 8, last line on the Court's 6/18/98 Memorandum and Order that "Neither OBERDING, SCARBURY, WATKINS, nor MARTINEZ are aware of any other GTE employee who ever falsified a time card." The Plaintifftestified that he knew two (2) Caucasian employees

that falsified time cards, and the Court should allow them to testify and be examined and cross-examined. The Court erred, because there was no deposition of MR. SCARBURY and no deposition of MS. MARTINEZ. Therefore, the Court must be erroneously using hearsay to make its statement. The Court has only cited and looked at the Defendant's briefs for Summary Judgment, and the Court did not consider Plaintiff's brief and the Court record. Otherwise, the above points in which the Court erred would not have been made in this 6/18/98 Memorandum and Order.

The Defendant allowed the employee's flex time at the job, and employees could take off at one point and make up the time on another day. Employees were doing same, including Plaintiff, GREGORY ALSTON, for about one year. The Court never acknowledged that the employer allowed flexible time to its employees, and the Plaintiff was allowed to go to school and allowed to go to the Navy Reserves, and work to put all of his job time through the week and some weekends.

CONSTITUTIONAL AND STATUTORY PROVISION INVOLVED

The Defendant violated The Plaintiff 's rights under the UNIFORM SERVICE AND REEMPLOYMENT RIGHTS (USERRA).38 U.S.C. §4301, §4311(a)(b)ACTS OF REPRISAL PROHIBITED

Fair Housing Act 1968 (42 USCS § 3612) 3rd

Relief from judgment Title 28,U.S.C., §1655 to set aside a judgment for fraud upon the court, all summary judgment against plantiff should be voided.

Title VII of the Civil Rights Act of 1964 42 U.S.C.§1981.

The Plaintiffs Seventh Amendment rights to trial by jury.

CONCLUSION

The plaintiff has been greatly harmed, due to the defendants unjust tactics, by not presenting direct evidence, not allowing testimony of material fact that will support his allegations of being terminated, because he is African American and not the pretext of falsifying his timecard without a valid signature. There are other issues such as Fraud, discovery violation, errors in judicial procedures and the plaintiff Seventh Amendment Rights being ignored. The court of Appeals didn"t embrace the the issues of District Court ruling,insteard they affirmed.

In sum,the evidance presented before the Court is that GTE policies and proceedures were constantly violated by management to antimidate employee. My time card that is in question is not properlly signed, I never had the oppotunity to complete or correct any defishinees. GTE has taken away the oppotunity for me dispute the timecard alligation by not following their company policies and proceedures. The plaintiff respectfully request that the court grant plaintiff leave to file a petition for writs of mandamus directed to the Court of Appeals, because the judges lack subject matter jurisdiction of the case in question and to vacate the errone-

jurisdiction of the case in question and to vacate the erroneously improper judgment entered by District Court and the Court of Appeals. I Requert that the Supreme Court utilize a mandamus to correct a federal District Court's errors, *Hindman v. National - Ben Franklin life Insurance Corp., 677 F.2d 617.620 ,620 (7th Cir. 1982),* abuse discretion not allowing full discovery, not reconigizing plaintiff served in the armed forces, refusing to respond to a motion. The next improper act is that the record has been interfed with , because I filed Two motions to have the records supplemented, yet there was only one motion recorded and that was the mooted motion the minute order from judge Manning ruling is not present , my two motions requesting defendent produce the required descovery items. The record stands to be inadequate.

Respectfully submitted

Gregory Alston